

REMARKS

I. Telephone Interview with Examiner

Applicant's Representative, Matthew Lambrinos, conducted an Applicant initiated Interview with the Examiner on April 10, 2008 to discuss the Final Action. Applicant and Examiner agreed on an amendment to clarify that desired data entered in and deleted from the command line is the desired data being recovered. The Examiner indicated that such amendment would result in the outstanding patentability rejections being withdrawn.

Applicant's Representative, Matthew Lambrinos, faxed the Examiner on April 14, 2008, a proposal to amend claim 1 to additional recite deleting said desired data utilizing said command line of said command line interface; and to limit the method step of automatically recovering said data to automatically recovering said desired data from said memory location of said data-processing system for display within said command line interface, if said desired data is inadvertently deleted utilizing said command line of said command line interface.

In a follow up telephone conversation of April 16, 2008, Matthew Lambrinos explained that the proposed amendment had changed from that discussed on April 14, 2008 because the description of the application discloses that it is the desired data that is deleted utilizing the command line of the command line interface that is automatically recovered for display within the command line interface. Matthew Lambrinos further clarified that Wilkerson merely discloses displaying second panel 752 requiring the user to confirm deletion prior to actual deletion (see FIG. 32 and corresponding description) and does not deal with recovery of data following deletion. Examiner provisionally indicated that this argument was persuasive but requested that the Applicant follow up with a full written response so that the Examiner could confirm this.

II. Claim Amendments

Claims 1, 8 and 12 have been amended as proposed to the Examiner on April 14, 2008. Thus, these claims have been limited to deleting said desired data utilizing said command line of said command line interface. Support for this amendment can be found throughout the application (see for example lines 6 to 8 of paragraph [0027] and lines 5 and 6 of paragraph [0028] of the original application as filed). Also, the claims have been amended to clarify that the data automatically recovered is the desired data inadvertently deleted utilizing the command line interface. Applicant submits that the skilled person would understand that the application implicitly discloses that the desired data inadvertently deleted is deleted utilizing the command line interface (see for example lines 4 and 5 of paragraph [0018] in conjunction with lines 6 to 8 of paragraph [0027], lines 5 and 6 of paragraph [0028] and lines 5 and 6 of paragraph [0029] of the original application as filed).

III. Claim Rejections – 35 USC § 102

Requirements for Prima Facie Anticipation

A general definition of *prima facie* unpatentability is provided at 37 C.F.R. §1.56(b)(2)(ii):

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability. (emphasis added)

"Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing *Soundsciber Corp. v.*

United States, 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1966)), *cert. denied*, 469 U.S. 851 (1984). Thus, to anticipate the applicants' claims, Kurita must disclose each element recited therein. "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991).

To overcome the anticipation rejection, the applicant need only demonstrate that not all elements of a *prima facie* case of anticipation have been met, *i.e.*, show that the reference cited by the Examiner fails to disclose every element in each of the applicants' claims. "If the examination at the initial state does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent." *In re Oetiker*, 977 F.2d 1443, 24 USPQ 2d 1443, 1444 (Fed. Cir. 1992).

Wilkerson

Claims 1, 12, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by USP, 5,778,387, Wilkerson et al. ('WILKERSON' hereinafter).

With respect to claim 1, the Examiner asserted that WILKERSON teaches method in a data-processing system for recovering data (see Fig. 3, WILKERSON), comprising: identifying desired data from a command line interface displayable (Fig. 55, Wilkerson) within a display area of a data-processing system (see col. 11, lines 34-41, Wilkerson); automatically saving said desired data in a memory location of said data-processing system, in response to identifying said desired data from said command line interface (see col. 12, lines 16-24, Figs. 3-8 Wilkerson); and automatically recovering said data from said memory location of said data-processing system for display within said command line interface, if said desired data is inadvertently deleted from a command line of said command line interface (see col., 19, lines 50-56, Fig. 32, Claim 1, Wilkerson).

Examiner asserted that Claims 12 and 18 have the same subject matter as of claim 1 and are essentially rejected for the same reasons as discussed above.

Applicant disagrees with this assessment. Applicant submits that Wilkerson is directed to a method and apparatus that automates database recovery. The Abstract provides a concise summary of the method and apparatus disclosed in Wilkerson and is repeated below for the Examiner's convenience.

"The present invention is directed to a method and apparatus that automates the database recovery process. A person not technically skilled in the use of a computer can operate the new procedure. The process operates under a system in which menus known as "panels" prompt the user for information and process selection. The user merely selects one of the panels to start and operate the system. Each recovery procedure follows the same general series of steps comprising of initialization of system location and variables, selection by the operator of major functions including research, recovery, and cleanup, process of the function and function options, and execution of the mode in which the function will be processed. This panel driven system results in a significant reduction of the amount of time required for recovery, at least a twenty percent decrease for the period. In accordance with the present invention, the user identifies the corrupted database and enters the database name and estimated time stamp into the computer. The database recovery system automatically creates program control language and executes the language wherein the result provides a new, more accurate time stamp. The recovery system then creates additional program control language using the new time stamp and executes the program control language which then recovers the uncorrupted data. The user does not need to look up, write, or enter any program control language. These functions are fully automated."

In all described embodiments, Wilkerson teaches a method and apparatus which is related exclusively to recovering uncorrupted data from a database. Nowhere in Wilkerson is there disclosed a method for recovering data in a data

processing system including deleting desired data utilizing a command line of the command line interface; and automatically recovering the desired data from a memory location of said data-processing system for display within said command line interface, if said desired data is inadvertently deleted utilizing said command line of said command line interface, as now claimed.

Regarding the passages of Wilkerson relied on by the Examiner to support his rejection, Col. 11, lines 34-41 of Wilkerson refers to a "Recovery Clean-up procedure" which is a semi-automated procedure used to update information and allow the user to organize the data bases (see lines 64-67 of col. 7 and lines 1-2 of col. 8). Col. 12, lines 16-24, Figs. 3-8 Wilkerson, refers to a semi-automated function of the Recovery-clean up procedure. Col. 12, lines 16-24 of Wilkerson discloses that "When the SUBSYS, Delete option is used, the user enters a subsystem identification and the abnormal STARTRCV, ENDRECOV, Delete functions automatically occur", which contrary to the Examiner's assertion, does not disclose automatically saving said desired data in a memory location of said data-processing system, in response to identifying said desired data from said command line interface but rather discloses automatic occurrence of abnormal STARTRCV, ENDRECOV, Delete functions.

In the section of the Final Office Action entitled "Response to Arguments", the Examiner acknowledged that col. 19, lines 50-56, Fig. 32, Claim 1, of Wilkerson, teaches the "IC Delete routine, illustrated in FIG. 32 at step 744, has a secondary panel to protect against accidental deletion. After the initial panel is displayed 746, there is a determination if there are panel errors or an exit request from the user 748. If either occurs, the routine exits to step 144 of FIG. 12 (step 750). If neither occur, the process displays another panel 752, requiring the user to confirm the deletion (see col. 19, lines 50-56, Fig. 32, Claim 1, Wilkerson)". In order to more adequately understand this passage of Wilkerson, the Applicant refers the Examiner to Col 11, lines 19-21 which explains that "The final two second level Recovery options are Current IC Restore and IC Delete. They allow recovery of the secondary

Recovery options which allow recovery and deletion, respectively, of an Image Copy(IC) in a log.”. Thus, the passage col. 19, lines 50-56, Fig. 32, Claim 1, of Wilkerson teaches a panel through which a user can operate recovery options to restore or delete an Image Copy(IC) and nothing more. Wilkerson requires the user to confirm deletion via the secondary panel prior to actual deletion and then deletes the Image Copy following confirmation by the user. Wilkerson does not disclose or enable a user to use the panel to delete the Image Copy(IC) and then automatically recover the Image Copy (IC) from a memory location for display in the event that the Image Copy (IC) is inadvertently deleted.

Having regard to the foregoing, Applicant submits that claims 1, 12 and 18 are novel over Wilkerson. Applicant respectfully requests that the rejection to claims 1, 12, and 18 under 35 U.S.C. 102(b) as being anticipated by Wilkerson be withdrawn.

Furthermore, Applicant notes that there is nothing disclosed in Davis, nor common knowledge available to the skilled person, to teach or suggest the skilled person to modify Wilkerson to teach a method including automatically saving desired data in a memory location of a data-processing system, in response to identifying said desired data from said command line interface; deleting said desired data utilizing said command line of said command line interface; and automatically recovering said desired data from said memory location of said data-processing system for display within said command line interface, if said desired data is inadvertently deleted utilizing said command line of said command line interface, as now claimed. Davis discloses an entirely different method from that of the present application. In Davis, instead of removing a filename and pointer from a directory upon deletion, a “deleted” flag in a directory block record for the file is set but the record still remains there (see Col. 4, lines 4-7 of Davis). Thus, a person of ordinary skill in the art, adopting the teaching of Davis, would, for example, modify the IC delete routine of Davis so that upon deletion via the panel, a “deleted” flag in a directory block record for the file is set but the record still remains for restoring the

file and would not arrive at the claimed invention in which desired data is automatically saved in memory, in response to identifying said desired data from said command line interface; and automatically recovered said from said memory for display within said command line interface, if said desired data is inadvertently deleted utilizing said command line of said command line interface. Accordingly, a person of ordinary skill in the art combining Wilkerson and Davis would not arrive at the claimed subject matter of the present application.

Applicant therefore respectfully submits that claims 1, 12 and 18 are patentable over Wilkerson and Davis. Applicant submits that the claimed method and apparatus can, unlike Wilkerson or Davis, advantageously allow desired data actually deleted through the command line interface to be automatically recovered.

IV. Claim Rejections Under 35 U.S.C. §103

Requirements for Prima Facie Obviousness

The obligation of the examiner to go forward and produce reasoning and evidence in support of obviousness is clearly defined at M.P.E.P. §2142:

“The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.”

The U.S. Supreme Court ruling of April 30, 2007 (KSR Int'l v. Teleflex Inc.) states:

“The TSM test captures a helpful insight: A patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art. Although common sense directs caution as to a patent application claiming as innovation the

combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the art to combine the elements as the new invention does.”

“To facilitate review, this analysis should be made explicit.”

The U.S. Supreme Court ruling states that it is important to identify a reason that would have prompted a person to combine the elements and to make that analysis explicit. MPEP §2143 sets out the further basic criteria to establish a prima facie case of obviousness:

1. a reasonable expectation of success; and
2. the teaching or suggestion of all the claim limitations by the prior art reference (or references when combined).

It follows that in the absence of such a prima facie showing of obviousness by the Examiner (assuming there are no objections or other grounds for rejection) and of a prima facie showing by the Examiner of a reason to combine the references, an applicant is entitled to grant of a patent. Thus, in order to support an obviousness rejection, the Examiner is obliged to produce evidence compelling a conclusion that the basic criterion has been met.

Wilkerson in view of Davis

Claims 2-8, 13-17, and 19-22 rejected under 35 U.S.C. 103(a) as being unpatentable over USP, 5,778,387, Wilkerson et al as applied to above claims in view of USP 6,615,224, Lewis B. Davis ('Davis' hereinafter).

With regard to claim 2, the Examiner argued that WLKERSON teaches displaying said data within said command line interface, in response to automatically recovering said data from said memory location of said data processing system (see co 12, lines 16-24, Figs. 3-8 Wilkerson).

The Examiner also asserted that WILKERSON teaches indicating within said command line interface deletion if said desired data in response to said desired data being inadvertently deleted using said command line interface (see col. 19, lines 50-56, Fig. 32, Claim 1, Wilkerson).

The Examiner asserted that WILKERSON teaches the elements of claim 2 as noted above but does not explicitly teach "displaying an original file of said desired data within said command line interface, displaying an original file location of said desired data with said command line interface."

The Examiner argued however that Davis teaches displaying an original file of said desired data within said command line interface and displaying an original file location of said desired data with said command line interface as FIG. 6 illustrates a particular example of the directory block 450 with its records for various files and their mode pointers. The Examiner argued that the particular file 430 is recorded in its directory block 450 at the location 604 in FIG. 6. and that the mode pointer 608 in the file record 604 is displayed in the first field 616 of the directory block (see Abstract and Col 6, lines 32-37, Davis).

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of the cited references because Davis's teaching would have allowed Wilkerson to provide a method of file protection on UNIX platforms during file deletion processes, whereby no system performance is sacrificed and to enhance UNIX operating system performance, because final destruction of the oldest deleted files is done in large batches.

Applicant disagrees with this assessment. In particular, for the reasons already set forth above in relation to the rejection to claims 1, 12, & 18 under 35 U.S.C. 102(b) as being anticipated by Wilkerson, Col. 12, lines 16-24, Figs. 3-8 of Wilkerson does not teach automatically saving said desired data in a memory location of said data-processing system, in response to identifying said desired data

from said command line interface. In any event, for the reasons already set forth above in relation to the rejection to claims 1, 12, & 18 under 35 U.S.C. 102(b) as being anticipated by Wilkerson, the skilled person combining Wilkerson with Davis cannot arrive at the currently amended claims 1, 12 & 18.

As to claim 3, the Examiner asserted that WILKERSON teaches the step of utilizing said command line interface to interact with an operating system associated with said data-processing system (see col. 12, lines 16-24, Figs. 38 Wilkerson).

Examiner asserted WILKERSON teaches the elements of claim 3 as noted above but does not explicitly teach "displaying with the same window of said command line interface said original file, said original file location, said indication of deletion of said desired data, and said recovered data."

Examiner further asserted that Davis discloses displaying with the same window of said command line interface said original file, said original file location, said indication of deletion of said desired data, and said recovered data as (see Figure 6 Davis).

Examiner asserted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of the cited references because Davis's teaching would have allowed Wilkerson to provide a method of file protection on UNIX platforms during file deletion processes, whereby no system performance is sacrificed and to enhance UNIX operating system performance, because final destruction of the oldest deleted files is done in large batches.

Applicant disagrees with this assessment. In particular, Applicant disagrees with the assertion that WILKERSON teaches the step of utilizing said command line interface to interact with an operating system associated with said data-processing system because Wilkerson, in all embodiments, discloses using the panels to

interact with the Database Recovery software application and data base and not the operating system.

As to Claims 4 to 8 and Claims 13-17 and 19-22, Applicant disagrees with the Examiner's assessment of these claims set forth in the Office Action. In any event, for the reasons already set forth above in relation to the rejection to claims 1, 12, & 18 under 35 U.S.C. 102(b) as being anticipated by Wilkerson, the skilled person combining Wilkerson with Davis cannot arrive at the currently amended claims 1, 12 & 18.

Having regard to the foregoing, Applicant submits that Claims 2-8, 13-17, and 19-22 are patentable over Wilkerson in view of Davis. Applicant respectfully requests that the rejection under 35 U.S.C. 103(a) as being unpatentable over Wilkerson as applied to above claims in view of Davis be withdrawn.

V. Conclusion

In view of the foregoing discussion, the Applicants have requested continued examination of the application and responded to each and every rejection of the Final Official Action. The Applicants have clarified the structural distinctions of the present invention by amendments herein. The foregoing discussion and amendments do not present new issues for consideration and no new search is necessitated. Such amendments are supported by the specification and do not constitute new matter. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and further examination of the present application.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned representative to conduct an interview in an effort to expedite prosecution in connection with the present application.

Respectfully submitted,

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